

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

PETER C. ANDREOTTI,
Debtor.

BK. NO. 05-21400-B-13

MELANIE ANDREOTTI, a minor, by
E. JOAN BELL, her Guardian ad
Litem,

NO. CIV. S-05-747 LKK

Plaintiff,

v.

O R D E R

PETER C. ANDREOTTI and
DEBRA ANDREOTTI,

Defendants.

On July 22, 2002, Melanie Andreotti ("plaintiff") filed a complaint in Sacramento County Superior Court alleging sexual abuse, intentional infliction of emotional distress, and two counts of negligent infliction of emotional distress against her stepfather, Peter Andreotti ("defendant"). On February 24, 2005,

1 defendant removed this case to the Eastern District of California
2 pursuant to 28 U.S.C. § 1452(b), on the basis of "related to
3 bankruptcy" jurisdiction.

4 **I.**

5 **BACKGROUND¹**

6 In state court, defendant moved to reopen discovery on
7 February 8, 2005, although trial was set for February 14, 2005.
8 That motion was denied. On February 11, 2005, defendant filed for
9 bankruptcy relief in the Eastern District of California.
10 Consequently, all matters relating to this action were immediately
11 stayed. On February 24, 2005, defendant removed the case to the
12 United States Bankruptcy Court for the Eastern District of
13 California.

14 During the bankruptcy proceedings, plaintiff objected to
15 defendant's proposed Chapter 13 plan, which designated a minimum
16 of \$40,000 (plaintiff sought damages totaling \$ 2,000,000 in this
17 action). On March 30, 2005, defendant filed a motion to withdraw
18 reference, i.e., to transfer the proceedings from bankruptcy court
19 to this court. Plaintiff filed a statement of non-opposition to
20 the motion to withdraw reference and a counter-motion to remand.
21 All bankruptcy-related matters have been continued until August 18,
22 2005, when the bankruptcy court will hear plaintiff's objections
23 to defendant's proposed Chapter 13 plan. Pending before the court
24 is plaintiff's motion to remand this case to the Sacramento County
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26 ¹ Background facts are derived from the parties' papers.

1 Superior Court.²

2 **II.**

3 **ANALYSIS**

4 Plaintiff contends that her motion should be granted because
5 equity favors remanding the matter to state court. Plaintiff's
6 arguments are persuasive.

7 As a threshold matter, the court notes that plaintiff's suit
8 was properly removed to bankruptcy court because it is "related to"
9 the bankruptcy filing.³ The Supreme Court has held that "related
10 to" jurisdiction under Section 1334(b) should be interpreted
11 broadly. Celotex Corporation v. Edwards, 514 U.S. 300, 307-08
12 (1995). Because plaintiff's lawsuit against defendant involves a
13 potentially large claim, it conceivably has an effect on the estate
14 being administered in bankruptcy. Thus, the action is related to

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16 ² Because plaintiff does not oppose defendant's motion to
17 withdraw reference, this court assumes jurisdiction to consider
18 plaintiff's motion to remand.

19 ³ The Ninth Circuit has adopted a test set forth by the Third
20 Circuit in Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (1984), where
21 the Circuit Court explained that:

22 The usual articulation of the test for determining
23 whether a civil proceeding is related to bankruptcy is
24 whether the outcome of that proceeding could conceivably
25 have any effect on the estate being administered in
26 bankruptcy...Thus the proceeding need not necessarily be
against the debtor or against the debtor's property. An
action is related to bankruptcy if the outcome could
alter the debtor's rights, liabilities, options, or
freedom of action (either positively or negatively) and
which in any way impacts upon the handling and
administration of the bankrupt estate. See Fietz v.
Great Western Savings, 852 F.2d 455, 457 (9th Cir.
1988).

1 the bankruptcy proceedings and was properly removed.

2 Turning to the motion to remand, a district court has
3 original, but not exclusive, jurisdiction over a civil action whose
4 outcome could conceivably have any effect on the administration of
5 a bankruptcy estate. In re Fietz, 852 F.2d 455, 457 (9th Cir.
6 1988) (adopting rule from Pacor Inc., v. Higgins, 743 F.2d 984, 994
7 (3rd Cir. 1984)). District courts are not required to adjudicate
8 such removed actions. 28 U.S.C. § 1452(b) expressly provides that,
9 "The court may . . . remand (such actions) on any equitable
10 ground." Therefore, a court has discretion to remand a case
11 arising under or relating to Title 11 based on notions of "general
12 fairness." Schwarzer, Federal Civil Procedure Before Trial § 2:846
13 (The Rutter Group 2003).

14 There is no controlling authority on the meaning of "equitable
15 ground" because § 1452(b) also provides that: "An order entered
16 under this subsection remanding a claim or cause of action, or a
17 decision not to remand, is not reviewable by appeal or otherwise
18 by the court of appeals . . . or by the Supreme Court of the United
19 States" In reaching its remand decision, a court may
20 consider such factors as respect for state-court decision-making
21 and the predominance of state court issues. Schwarzer, Federal
22 Civil Procedure Before Trial § 2:846.19. (The Rutter Group 2003).
23 No consistent test emerges from the courts. Rather, courts have
24 considered various factors and devised different tests depending
25 on the unique circumstance of each case in applying the "equitable

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ground" language.⁴ Having carefully considered the instant matter and various "fairness factors," the court finds that fairness requires the action be remanded so it can finally be concluded.

The parties were litigating for three years in the state court before defendant filed for bankruptcy and removed the matter to bankruptcy court. Three days before trial was to commence on February 14, 2005, defendant filed for bankruptcy, and ten days later, defendant removed the matter to bankruptcy court. Because the case proceeded through pretrial, the California court is intimately familiar with the issues and the state law that governs
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⁴ The Second Circuit has held that § 1452(b)'s reference to "equitable ground" simply means one that is fair and reasonable. Cathedral of the Incarnation in the Diocese of Long Island v. Garden City Co., Inc., 99 F.3d 66, 69 (2d Cir. 1996). A Ninth Circuit bankruptcy appellate panel has explained that this "equitable ground" standard is an "unusually broad grant of authority" which "subsumes and reaches beyond all of the reasons for remand under the nonbankruptcy removal statutes." In re McCarthy, 230 B.R. 414, 417 (9th Cir. BAP 1999). The Southern District of California has held that consideration of the following factors may be appropriate in determining whether to remand: (1) the effect of the action on the administration of the bankruptcy estate; (2) the extent to which issues of state law predominate; (3) the difficulty of applicable state law; (4) comity; (5) the relatedness or remoteness of the action to the bankruptcy case; (6) the existence of a right to a jury trial; and (7) prejudice to the party involuntarily removed from state court. Williams v. Shell Oil, 169 B.R. 684, 692-93 (S.D. Cal. 1994). Finally, defendants point to Western Helicopters, Inc. v. Hiller Aviation, Inc., 97 B.R. 1, *2 (E.D. Cal. 1988) where Judge Schwartz remanded a civil case based on considerations of "judicial economy; comity and respect for state court decision-making capabilities; the effect of remand upon the related title 11 estate; the effect of bifurcating the claims and parties to an action and the possibilities of inconsistent results; the predominance of state law issues and non-debtor parties; and the prejudice to other parties to the action."

1 the case.⁵ Defendant admits that plaintiff's lawsuit is the reason
2 he sought bankruptcy protection in the first instance. Opp'n at
3 1. It is clear to the court that through the filing of the
4 bankruptcy proceedings and the motion to reopen discovery in state
5 court, defendant was merely seeking to delay trial. Notably,
6 plaintiff explains that the state court would set trial within
7 sixty to ninety days and that if this matter were remanded to the
8 state court, trial would likely begin in October or November of
9 this year.⁶ Plaintiff contends that if the case remains with this
10 court, it is likely to further delay trial. Pl.'s Repl. at 3.
11 Plaintiff's argument is well-taken. In sum, consideration of
12 judicial economy and comity supports remand to the state court,
13 especially considering the time invested by that court in the case.

14 Defendant contends that he will be prejudiced by remand
15 because of the resources he has already expended in trying the
16 matter at the federal level. Defendant points out that plaintiff
17 could have moved for remand in February when this case was removed,
18 but did not. This argument is unpersuasive. Both parties have
19 incurred expenses at the federal level. Rather, it appears that
20 plaintiff would be prejudiced if this court were not to remand the
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22 ⁵ Significantly, all claims are based upon state law causes
23 of action. Although the law involved in this case is not
24 difficult, per se, the California court certainly has a greater
degree of expertise than does this court.

25 ⁶ During oral argument, defendant maintained that a trial in
26 state court could not begin earlier than March or April 2006. As
I explained to defendant during the hearing, it is unlikely that
the trial could begin any sooner in this court.

1 instant case. Plaintiff contends that she was prejudiced when
2 defendant removed this action three days prior to trial because she
3 was prepared to proceed with trial which was actually set to begin.
4 The removal statute was not intended as a litigation strategy to
5 be used for the purpose of delay.

6 For the reasons set forth above, the court ORDERS as follows:

7 1. The motion to withdraw reference is GRANTED;

8 2. The motion to remand the suit removed from the Superior
9 is GRANTED; and

10 3. The matter is REFERRED to the Bankruptcy Court for such
11 further proceedings as it deems appropriate.

12 IT IS SO ORDERED.

13 DATED: August 3, 2005.

14 /s/Lawrence K. Karlton

15 LAWRENCE K. KARLTON

16 SENIOR JUDGE

17 UNITED STATES DISTRICT COURT
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